



Los Angeles County  
Department of Regional Planning

*Planning for the Challenges Ahead*



October 13, 2005 - REVISED

James E. Hartl AICP  
Director of Planning

The Honorable Board of Supervisors  
County of Los Angeles  
Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**AUTHORIZATION REQUEST FOR DIRECTOR OF PLANNING TO ENTER INTO  
THREE-PARTY CONTRACTUAL AGREEMENT ON BEHALF OF LOS ANGELES  
COUNTY WITH PRIVATE DEVELOPMENT APPLICANTS AND ENVIRONMENTAL  
CONSULTANTS  
(3-VOTE)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Grant authority to the Director of Planning or his designee to enter on behalf of Los Angeles County into the attached standard form three-party contractual agreement with development applicants and environmental consultants in order for the County to have better control over the preparation of environmental impact reports (EIRs) when required for the processing of private development applications within the unincorporated areas of the County.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

This request is to allow the Director of Planning or his designee to act on behalf of the County in order to enter into contractual agreements with private development applicants and a third-party environmental consultant. This action implements one of the recommendations of the Land Development Task Force (LDTF) designed to better serve both the public and the development community.

The Environmental Issues Work Group of the LDTF has recommended as its first goal the need for the Department of Regional Planning (DRP), and other County departments not currently following this practice, to have contractual authority as a guide for applicants, environmental consultants and any sub-consultants in the preparation of EIRs. In addition, the use of a three-party agreement is the implementation of the first recommendation contained within the DRP report "Review of Alternative Techniques to Prepare Environmental Documents."

**The Honorable Board of Supervisors  
Director of Planning Contract Authority  
October 13, 2005**

The benefits to the County from the use of this three-party agreement are the requirement of the applicant to disclose all information relevant to the environmental analysis, a guarantee of impartiality during the preparation of the EIR, and a clear statement of responsibilities of the County, the applicant, and the environmental consultant.

**IMPLEMENTATION OF COUNTYWIDE STRATEGIC PLAN GOALS**

This action promotes the County's Strategic Plan goal of Service Excellence. The use of the EIR agreement is intended to guarantee the expression of the County's independent judgment in the preparation and review of an EIR and will provide to applicants and consultants specific work product expectations.

**FISCAL IMPACT/FINANCING**

Implementation of the proposed contractual agreement will not result in any new significant costs to the County or to the Department of Regional Planning and, therefore, no request for financing is being made or is needed.

**FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The DRP currently allows project developers to hire the environmental consultant, as permitted under Section 21082.1(a) of the Public Resources Code, to prepare the EIR on behalf of the County. County staff reviews these documents to assure that the County's independent judgment is conveyed in the document. The agreement requirement will make formal the expectations and requirements of project applicants and environmental consultants in the processing of their environmental document. This provision is consistent with the State CEQA Guidelines Section 15084 (d)(4).

This agreement has been reviewed by County Counsel and the full LDTF. It has been found to be acceptable because it incorporates the recommendations of these groups. The agreement implements the recommendations of the DRP report "Review of Alternative Techniques to Prepare Environmental Documents."

**ENVIRONMENTAL DOCUMENTATION**

This authorization for the Director of Planning to enter into a three-party contractual agreement is not considered a project under the State CEQA Guidelines (Section 15378(b)(2)).

The Honorable Board of Supervisors  
Director of Planning Contract Authority  
October 13, 2005

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Granting this authority to the Director of Planning will have no impact on current services. The agreement formalizes the current informal procedures of DRP.

If you have any questions please do not hesitate to contact Daryl Koutnik of my staff Monday through Thursday from 7:00 a.m. to 6:00 p.m., at (213) 974-6461. Our offices are closed on Fridays.

Respectfully Submitted,

DEPARTMENT OF REGIONAL PLANNING

A handwritten signature in black ink, appearing to read "James E. Hartl", is written over the printed name and title.

James E. Hartl, AICP  
Director of Planning

JEH:FM:dlk

Attachments:      **Proposed Three-Party Agreement (with attachments).**

cc:                      Chief Administrative Officer  
                            County Counsel  
                            Executive Officer, Board of Supervisors  
                            Director, Department of Public Works

**AGREEMENT  
ENVIRONMENTAL IMPACT REPORT  
PREPARATION AND REVIEW  
(PROJECT #/ PROJECT ADDRESS/ "PROJECT NAME")**

This agreement, hereinafter referred to as the "Agreement," is made and entered into by and between the County of Los Angeles, through its designated department, the County of Los Angeles Department of Regional Planning, hereinafter collectively referred to as "County," \_\_\_\_\_ (APPLICANT NAME), hereinafter referred to as "Applicant," and \_\_\_\_\_ (EIR CONSULTANT NAME), hereinafter referred to as "EIR Consultant," for purposes of establishing the rights and responsibilities of all undersigned parties hereto in relation to the preparation and review of an environmental impact report, including a draft document, revisions to the draft, draft responses to comments, and other documents associated therewith (collectively, the "EIR") for the above-referenced proposed project ("Project").

WHEREAS, County is the Lead Agency pursuant to the California Environmental Quality Act, Public Resources Code §§ 21000 et seq. ("CEQA"), with land use and planning jurisdiction over the Project area, which is located in the unincorporated territory of the County of Los Angeles; and

WHEREAS, the Los Angeles County Board of Supervisors has designated the County of Los Angeles Department of Regional Planning as the department with land use and planning duties and responsibilities in the unincorporated area of the County, including the preparation and review of environmental documentation related to land use entitlements; and

WHEREAS, the Applicant has submitted an application for discretionary entitlements to develop the Project, which the Applicant requests the County to approve; and

WHEREAS, the County has determined pursuant to the provisions of CEQA that the project may cause a significant effect on the environment requiring the preparation of an EIR; and

WHEREAS, the County is authorized by CEQA § 21082.1 and CEQA Guidelines § 15084 to choose from among the following arrangements or combination of arrangements for preparing the EIR: preparation of the EIR directly by County staff; contracting with another public or private entity to prepare the EIR; accepting draft EIR materials prepared by the Applicant, a consultant retained by the Applicant or any other person; or executing a three-party contract with the Applicant and/or independent contractor to govern the preparation of an EIR by an independent contractor; and

WHEREAS, the Applicant has requested, and the County has chosen to allow the Applicant, to select and retain the EIR Consultant to prepare the draft EIR to be submitted to the County for independent review; and

WHEREAS, the EIR Consultant has an interest in preparing the draft EIR in a manner that is satisfactory to the County to ensure continued eligibility to prepare EIRs for consideration by the County for future development projects; and

WHEREAS, the County, Applicant and EIR Consultant understand and agree that the adequacy of performance of the EIR Consultant shall be determined at the sole reasonable discretion of the County, and that the EIR Consultant's responsibility to provide a complete and accurate EIR is owed solely to the County; and

WHEREAS, the County, Applicant and EIR Consultant wish to define their relationships and areas of responsibility in the preparation and management of the EIR and EIR process.

NOW, THEREFORE, in view of the foregoing, and in consideration of the mutual covenants and agreements contained herein, the County, Applicant, and EIR Consultant do hereby agree as follows:

**I. NECESSITY OF AN EIR**

The County and the Applicant hereby agree that development of the Project may cause a significant effect on the environment, necessitating the preparation of an EIR.

**II. SUBMISSION OF DOCUMENTS**

The Applicant and EIR Consultant shall submit all environmental documents under this Agreement pursuant to the terms and conditions set forth herein and in accordance with the "County of Los Angeles Environmental Document Reporting Procedures and Guidelines."

**III. CERTIFICATIONS**

By executing this Agreement:

- A. The Applicant certifies that it has an ongoing obligation and commitment to the County to disclose all information in its possession or which it becomes aware of that is relevant to the environmental consequences of the Project and the preparation of the EIR, and further certifies that no relevant information has been or will be omitted or withheld from the County, the EIR Consultant or any sub-consultant(s).

B. The EIR Consultant certifies:

1. That it is a professional environmental consulting firm with experience in the preparation of EIRs; it is in good standing with the County; it meets the criteria set forth in the County's EIR Consultant Qualifications Checklist (Exhibit A); and it is prepared to undertake all necessary technical and analytical work required in conjunction with the EIR, either directly or through the use of any sub-consultant(s); and
2. That it has an ongoing obligation and commitment to the County to disclose all information in its possession, or of which it becomes aware, that is relevant to the environmental consequences of the Project and the preparation of the EIR, and further certifies that no relevant information has been or will be omitted or withheld from the County at the request of the Applicant or for any other reason. The EIR Consultant shall require any sub-consultant(s) to certify these same obligations and commitments to the County and shall provide a copy of such certification to the County within ten (10) days of retaining such sub-consultant(s).

**IV. APPLICANT'S RIGHT AND RESPONSIBILITIES**

- A. Subject to the terms and conditions of this Agreement, the County agrees to allow the Applicant to select and retain the undersigned EIR Consultant for preparation of the EIR. For this purpose, the Applicant shall enter into a direct agreement with the EIR Consultant, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this Agreement, and no term therein shall be inconsistent with any provision herein.
- B. The Applicant shall be responsible for one hundred-percent (100%) of all costs associated with the EIR Consultant's work, including but not limited to, any sub-consultant(s) costs, EIR preparation and document circulation costs incurred by the Applicant or EIR Consultant, and all costs associated with participation in scoping meetings or community outreach meetings, as necessary. In accordance with County Code Section 12.04.020, the Applicant shall also be responsible for one hundred-percent (100%) of all costs incurred by the County related to its independent review of the EIR, and for any third-party review of any portion of the EIR that the County deems is necessary.

- C. The Applicant shall cooperate fully with the County in the land use and planning activities related to the Project and in the preparation of the EIR, and shall be responsible for the day-to-day management of the EIR Consultant in the preparation of the EIR and associated technical reports.
- D. The EIR Consultant shall inform the County of meetings or conference calls between the Applicant, EIR Consultant and/or any sub-consultant(s) related to the Project, the EIR or any other document prepared in connection with the environmental review of the Project. This communication may be through the use of electronic mail or telephone call to the County.
- E. The Applicant shall ensure that any sub-consultant(s) hired in conjunction with the preparation of the EIR and related technical reports for and related to the Project shall comply with all terms and conditions set forth in this Agreement.
- F. The Applicant shall not enter into any form of confidentiality agreement with the EIR Consultant or any sub-consultant(s), which prohibits disclosure of Project-related environmental information to the County or other public agencies.

**V. EIR CONSULTANT'S RIGHTS AND RESPONSIBILITIES**

- A. The EIR Consultant shall have an ongoing obligation and commitment to the County to disclose all information in its possession, or of which it becomes aware, that is relevant to the environmental consequences of the Project and the preparation of the EIR. The EIR Consultant shall not omit or withhold any relevant information from the County at the request of the Applicant or for any other reason. The EIR Consultant shall require any sub consultant(s) to certify these same obligations and commitments to the County and shall provide a copy of such certification to the County within then (10) days of retaining such sub-consultant(s).
- B. The EIR Consultant shall enter into a direct agreement with the Applicant for purposes of preparing the EIR, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this Agreement, and no term therein shall be inconsistent with any provision herein.

- C. The EIR Consultant's responsibility to provide a complete and accurate EIR is owed solely to the County and the EIR Consultant's accountability under this Agreement shall be solely to the County, and not to the Applicant or to any person or entity.
- D. The EIR Consultant shall ensure that any sub-consultant(s) hired in conjunction with the preparation of the EIR and/or related technical reports shall comply with all terms and conditions set forth in this Agreement.
- E. The EIR Consultant shall draft the EIR for the project in accordance with the directions and specifications set forth by the County, or its designee, related to the EIR's form and content. The EIR Consultant shall perform all activities necessary for the preparation of the EIR, including coordinating the day-to-day processing and creation of the EIR.
- F. The EIR Consultant shall verify and ensure that all EIR documents prepared by itself and by any sub-consultant(s) utilize accurate and verifiable field techniques in accordance with generally accepted industry standards, and are in conformance with all applicable CEQA requirements, and all applicable County, State, and Federal rules and regulations.
- G. The EIR Consultant shall verify and ensure that all EIR documents prepared by itself and by any sub-consultants, including the draft EIR, final EIR, technical reports, and Response to Comments, represents its complete and independent professional judgment and analysis of the specific environmental issues, setting, potential impacts, and mitigation measures associated with the Project.
- H. Upon completion of a draft screencheck EIR, the EIR Consultant and/or any sub-consultant(s) shall simultaneously submit a copy of such draft to the County and to the Applicant.
- I. The EIR Consultant shall maintain, inclusive of any sub-consultant(s), a record of communications with the Applicant, and such record shall be submitted to the County for review upon request.
- J. Neither the EIR Consultant nor any sub-consultant(s) may be a subsidiary of the Applicant or have any financial interest in the proposed Project or any other property or development in which the Applicant has a financial interest.



## **VI. COUNTY'S RIGHTS AND RESPONSIBILITIES**

- A. The County has the sole right and discretion to determine the adequacy of performance of the EIR Consultant and any sub-consultant(s). Final authority on all decisions concerning preparation of the EIR or any other document under this Agreement shall lie with the County.
- B. In accordance with the Public Resources Code Section 21082.1, it is the responsibility of the County to provide its independent review and analysis of all documentation for the Project prepared and submitted by the EIR Consultant, any sub-consultant(s), and the Applicant.
- C. The County shall be responsible for evaluating the extent and detail of topic area discussions in the EIR. The County shall also be responsible for providing written responses to comments received during the Notice of Preparation, for scheduling and providing the public notice for the public meetings and hearings related to the Project, for distributing the draft and final EIR.
- D. The County shall have the right to attend, or participate in, any and all meetings or conference calls as described in paragraph IV(D) of this Agreement.
- E. The County shall have the right to request copies of any and all correspondence, meeting schedules, minutes, and draft technical reports generated by the EIR Consultant, any sub-consultant(s) and the Applicant, in connection with the preparation of the EIR. Upon request by the County, the EIR Consultant shall make available to the County any and all field notes, resource documents, and supplemental technical studies used in the preparation of the EIR. Submission of the requested materials pursuant to this provision must be accomplished within a reasonable timeframe and in the format directed by the County.
- F. The County shall monitor and review any and all changes to the draft EIR before the Applicant and/or EIR Consultant submits the draft EIR for formal County screen check review. This requirement does not preclude the Applicant from commenting on the contents of the EIR.
- G. To the extent that the County finds that the performance of the EIR Consultant and any sub-consultant(s) under this Agreement is satisfactory, the County agrees that the EIR Consultant will maintain continued eligibility to participate in future projects for or on behalf of the County.

## **VII. DEBARMENT OF EIR CONSULTANT**

The parties to this Agreement hereby agree that the Agreement is subject to Sections 2.202.010 through 2.202.060 of the Los Angeles County Code (the "Debarment Ordinance") as it relates to the EIR Consultant and/or any sub-consultant(s). In that connection, the parties agree that this Agreement is a "contract," and that the EIR Consultant and any sub-consultant(s) is a "contractor," as those terms are defined by § 2.202.020 of the Debarment Ordinance. The Debarment Ordinance is attached in its entirety (Exhibit B) and is made a part of the Agreement.

## **VIII. EXPIRATION**

This Agreement shall expire at the time that the Project and the EIR becomes administratively final by the Regional Planning Commission and/or the Los Angeles County Board of Supervisors, and after all legal challenges associated with the Project and the EIR have been finally adjudicated.

## **IX. COUNTERPARTS**

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the County, the Applicant and the EIR Consultant have caused this Agreement to be executed below:

**COUNTY OF LOS ANGELES**

\_\_\_\_\_  
Director, Department of Regional Planning

Dated:\_\_\_\_\_

**APPLICANT**

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Company Name

Dated:\_\_\_\_\_

**EIR CONSULTANT**

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Company Name

Dated:\_\_\_\_\_

## EXHIBIT A

### **EIR CONSULTANT QUALIFICATIONS CHECKLIST**

The environmental consultant selected to prepare an environmental impact report (EIR) under the provisions of the California Environmental Quality Act (CEQA) on behalf of Los Angeles County as Lead Agency for private development proposals seeking discretionary permits and approvals will possess the following qualifications and characteristics:

Possess or have subcontract capability to certified or registered technical professional expertise (geology, hydrology, civil engineering, environmental health, acoustic engineering, etc.). Experience in water supply analysis for qualifying subdivision projects is preferred;

Possess project managerial expertise in CEQA with a clear understanding of Lead Agency responsibilities and independent judgment;

Possess knowledge of Los Angeles County government policies, ordinances, regulations and land use plans;

Possess familiarity with Los Angeles County departments and their statutory responsibilities;

Possess professional level of written and oral presentation skills;

Possess proven ability to produce documents in a timely manner;

Possess successful record to legal challenges of environmental documentation.

Upon request by the Los Angeles County Department of Regional Planning, the environmental consultant will be expected to demonstrate qualifications by providing a list and description of project experience of a similar nature to the proposed project.

For more information regarding EIR consultant selection, please contact the Impact Analysis Section of the Department of Regional Planning at (213) 974-6461.

## EXHIBIT B

### Title 2 ADMINISTRATION

#### Chapter 2.202 DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR *DEBARMENT*

##### 2.202.010 Findings and declarations.

A. The board of supervisors finds that, in order to promote integrity in the county's contracting processes and to protect the public interest, the county's policy shall be to conduct business only with responsible contractors. The board of supervisors further finds that debarment is to be imposed only in the public interest for the county's protection and not for the purpose of punishment.

B. Determinations of contractor non-responsibility and contractor debarment shall be made in accordance with the procedures set forth in the ordinance codified in this chapter and implementation instructions issued by the auditor-controller. (Ord. 2005-0066 § 1, 2005: Ord. 2000-0011 § 1 (part), 2000.)

##### 2.202.020 Definitions. For purposes of this chapter, the following definitions apply:

A. "Contractor" means a person, partnership, corporation, or other entity who has contracted with, or is seeking to contract with, the county or a nonprofit corporation created by the county to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county. A contractor includes a contractor, subcontractor, vendor, or any person or entity who or which owns an interest of 10 percent or more in a contractor, subcontractor, or vendor.

B. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county.

C. "Debarment" means an action taken by the county which results in a contractor being prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the county. A contractor who has been determined by the county to be subject to such a prohibition is "debarred."

D. "Department head" means either the head of a department responsible for administering a particular contract for the county or the designee of same.

E. "County" means the county of Los Angeles, any public entities for which the board of supervisors is the governing body, and any joint powers authorities of which the county is a member that have adopted county contracting procedures.

F. "Contractor hearing board" means the persons designated to preside over contractor debarment hearings and make recommendations on debarment to the board of supervisors.

G. Determination of "non-responsibility" means an action taken by the county which results in a contractor who submitted a bid or proposal on a particular contract being prohibited from being awarded and/or performing work on that contract. A contractor who has been determined by the county to be subject to such a prohibition is "non-responsible" for purposes of that particular contract.

H. "Bid or proposal" means a bid, proposal, or any other response to a solicitation submitted by or on behalf of a contractor seeking an award of a contract. (Ord. 2005-0066 § 2, 2005: Ord. 2004-0009 § 1, 2004: Ord. 2000-0011 § 1 (part), 2000.)

##### 2.202.030 Determination of contractor non-responsibility.

A. Prior to a contract being awarded by the county, the county may determine that a contractor submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the county determines that a contractor is non-responsible for a particular contract, said contractor shall be prohibited from being awarded and/or performing work on that contract.

B. The county may declare a contractor to be non-responsible for purposes of a particular contract if the county, in its discretion, finds that the contractor has done any of the following: (1) violated a term of a contract with the county or a nonprofit corporation created by the county; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the county, any other public entity, or a nonprofit corporation created by the county, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the county or any other public entity.

C. The decision by the county to find a contractor non-responsible for a particular contract is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns, or practices as well as any relevant mitigating or aggravating factors, including those described in Subsection 2.202.040 (E) below, may be considered by the county in determining whether a contractor should be deemed non-responsible.

D. Before making a determination of non-responsibility pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed non-responsibility determination, and shall advise the contractor that a non-responsibility hearing will be scheduled on a date certain. Thereafter, the department head shall conduct a hearing where evidence on the proposed non-responsibility determination is presented. The contractor and/or attorney or other authorized representative of the contractor shall be afforded an opportunity to appear at the non-responsibility hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence. After such hearing, the department head shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be found non-responsible with respect to the contract(s) at issue. A record of the hearing, the proposed decision, and any recommendation shall be presented to the board of supervisors. The board of supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the department head. A non-responsibility finding shall become final upon approval by the board of supervisors. (Ord. 2005-0066 § 3, 2005: Ord. 2004-0009 § 2, 2004: Ord. 2000-0011 § 1 (part), 2000.)

## 2.202.040 Debarment of Contractors.

A. The county may debar a contractor who has had a contract with the county in the preceding three years and/or a contractor who has submitted a bid or proposal for a new contract with the county.

B. The county may debar a contractor if the county finds, in its discretion, that the contractor has done any of the following: (1) violated a term of a contract with the county or a nonprofit corporation created by the county; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the county, any other public entity, or a nonprofit corporation created by the county, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the county or any other public entity.

C. The decision by the county to debar a contractor is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns, or practices as well as any relevant mitigating or aggravating factors, including those described in Subsection (E) below, may be considered by the county in determining whether to debar a contractor and the period of debarment. Generally, the period of debarment should not exceed five years. However, if circumstances warrant, the county may impose a longer period of debarment up to and including permanent debarment.

D. To impose a debarment period of longer than five years, and up to and including permanent debarment, in addition to the grounds described in Subsection (B) above, the county shall further find that the contractor's acts or omissions are of such an extremely serious nature that removal of the contractor from future county contracting opportunities for the specified period is necessary to protect the county's interests.

E. Mitigating and aggravating factors that the county may consider in determining whether to debar a contractor and the period of debarment include but are not limited to:

- (1) The actual or potential harm or impact that results or may result from the wrongdoing.
- (2) The frequency and/or number of incidents and/or duration of the wrongdoing.
- (3) Whether there is a pattern or prior history of wrongdoing.
- (4) A contractor's overall performance record. For example, the county may evaluate the contractor's activity cited as the basis for the debarment in the broader context of the contractor's overall performance history.
- (5) Whether a contractor is or has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more of the grounds for debarment specified in this Section.
- (6) Whether a contractor's wrongdoing was intentional or inadvertent. For example, the county may consider whether and to what extent a contractor planned, initiated, or carried out the wrongdoing.
- (7) Whether a contractor has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for debarment and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
- (8) Whether and to what extent a contractor has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the contractor made or agreed to make restitution.
- (9) Whether a contractor has cooperated fully with the county during the investigation, and any court or administrative action. In determining the extent of cooperation, the county may consider when the cooperation began and whether the contractor disclosed all pertinent information known to the contractor.
- (10) Whether the wrongdoing was pervasive within a contractor's organization.
- (11) The positions held by the individuals involved in the wrongdoing.
- (12) Whether a contractor's principals participated in, knew of, or tolerated the offense.
- (13) Whether a contractor brought the activity cited as a basis for the debarment to the attention of the county in a timely manner.
- (14) Whether a contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the county.
- (15) Whether a contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
- (16) Whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.
- (17) Other factors that are appropriate to the circumstances of a particular case.

F. Before making a debarment determination pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed debarment, and shall advise the contractor that a debarment hearing will be scheduled on a date certain. The contractor hearing board shall conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or attorney or other authorized representative must be given an opportunity to appear at the debarment hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence at that hearing. After such hearing, the contractor hearing board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred and, if so, the appropriate length of time for the debarment. A record of the hearing, the proposed decision, and any recommendation shall be presented to the board of supervisors. The board of supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the contractor hearing board. A debarment finding shall become final upon the approval of the board of supervisors.

G. In making a debarment determination, the board of supervisors may also, in its discretion and consistent with the terms of any existing contracts that the contractor may have with the county, terminate any or all such existing contracts. In the event that any existing contract is terminated by the board of supervisors, the county shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law.

H. With respect to a contractor who has been debarred for a period longer than five years, the contractor may, after the debarment has been in effect for at least five years, request that the county review the debarment determination to reduce the period of debarment or terminate the debarment. The county may consider a contractor's request to review a debarment determination based upon the following circumstances: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or

(4) any other reason that is in the best interests of the county. A request for review shall be in writing, supported by documentary evidence, and submitted to the chair of the contractor hearing board. The chair of the contractor hearing board may either: 1) determine that the written request is insufficient on its face and deny the contractor's request for review; or (2) schedule the matter for consideration by the contractor hearing board which shall hold a hearing to consider the contractor's request for review, and, after the hearing, prepare a proposed decision and a recommendation to be presented to the board of supervisors. The board of supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the contractor hearing board. A reduction of the period of the debarment or termination of the debarment shall become final upon the approval of the board of supervisors. (Ord. 2005-0066 § 4, 2005: Ord. 2004-0009 § 3, 2004: Ord. 2000-0011 § 1 (part), 2000.)

## 2.202.050 Pre-emption.

In the event any contract is subject to federal and/or state laws that are inconsistent with the terms of the ordinance codified in this chapter, such laws shall control. (Ord. 2000-0011 § 1 (part), 2000.)

## 2.202.060 Severability.

If any section, subsection, subpart or provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this chapter and the application of such to other persons or circumstances shall not be affected thereby. (Ord. 2000-0011 § 1 (part), 2000.)